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7590	03/31/2005		EXAMINER	
JULES E. GOLDBERG, ESQ. REED SMITH LLP 599 LEXINGTON AVENUE 29TH FLOOR NEW YORK, NY 10022			TAWFIK, SAMEH	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/690,377
Filing Date: October 17, 2000
Appellant(s): AIBA ET AL.

MAILED
APR 01 2005
GROUP 3700

Jules E. Goldberg
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 25, 2005.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The patentability of claims 6 and 9 stand or fall together.

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

4,017,030	Coplan et al.	4/1977
5,993,843	Sakurada et al.	11/1999

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coplan et al. (4,017,030) in view of Sakurada et al. (5,993,843).

Coplan discloses a method for preparing an annular sustained release pheromone-dispenser whose end portions are connected to each other (Figs. 3a and 3b); comprising the steps of arranging a plurality of continuous plastic tubes (Figs. 3a and 3b) wherein the tubes have a diffusivity and a permeability to a liquid synthetic (Abstract lines 1-3) which are filled with a liquid synthetic sex pheromone (Fig. 1); fusing them at a predetermined pitches by heating under a pressure and then cutting them at each fused portion to produce a dispenser composed of two side by side tubes having closely sealed both end portions (Figs. 3a and 3b; column 8, lines 53-57). Coplan does not disclose that pulling apart the center portion to separate the central portion of each tube from the central portion of the other tube. However, Sakurada discloses a similar method of preparing an annular sustained release pheromone dispenser comprising the step of pulling apart the central portion to separate the central portion of each tube from the central portion of the other tube, see for example (Fig. 1; via 18; column 14, lines 65-67 and column 15, lines 1 and 2) to provide a biodegradable sustained release preparation which can during

application carry out sustained release of its active ingredient stably at a desired release rate for a long period of time (column 3, lines 50-55).

Coplan does not disclose that cutting the tubes at a middle of each such fused portion. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Coplan's method by cutting the tubes at a middle of each such fused portion, since applicant has not disclosed that cutting the tubes at a middle of each such fused portion solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with Coplan cutting line by the end of the fusing portion (Fig. 3a). Note that Coplan at Fig. 4a inherently disclosing cutting the tube at a middle of the fused portion (Fig. 4a and column 7, lines 30-36) to come up with the tube shown at Fig. 4b.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Coplan's method for preparing an annular sustained release pheromone-dispenser by having the step of pulling apart the central portion to separate the central portion of each tube from the central portion of the other tube, as suggested by Sakurada, in order to provide a biodegradable sustained release preparation which can during application carry out sustained release of its active ingredient stably at a desired release rate for a long period of time.

Regarding claim 6: Coplan discloses the plurality of plastic tubes are fused by heating under pressure after sandwiching the portion to be fused between a pair of pieces made of a plastic (Figs. 12 and 13; column 8, lines 53-58).

(11) Response to Argument

Appellant's contend that Coplan does not disclose cutting the plastic tubes at the middle of each fused portion nor pulling apart the central portion of the tubes nor disclose the production of a tube having both ends closed, rather Coplan discloses the cut is at the end of the fused portion. Further, the appellants refer to the present invention and the significance of having both ends of the plastic tubes sealed with liquid sex pheromone contained within is so that the pheromone may diffuse and/or permeate the walls of the tubes. Appellants further point out to Sakurada's reference as certainly does not suggest that the both ends of the tube being sealed.

Examiner acknowledges that Coplan as shown in Fig. 3a could be seen as cutting the tube at the end of the fused portion, but it is inherent by referring to Fig. 4a of Coplan discloses that at the fused and sealed central section will be cut at the center of the fused section to come up of a single tube as shown in Fig. 4b, see for example (column 7, lines 30-36). Further, to what the appellants argue of the significance of having both ends of the plastic tubes sealed is not clearly claimed in the claims. Appellants in (claim 9, lines 9 and 10) "..two side by side tubes having closely sealed both end portions which are connected to each other and a central portion;.." is not referring to closing both ends of the tube, rather the examiner read them as fusing and sealing more than one tube at the same one end and not as appellants argue of sealing both ends of the plastic tubes. The examiner believes that the appellants are arguing rising up an issue is not clear in the claim language. Moreover, the examiner referring to Sakurada's reference to only show the teaching of pulling apart central portion of adjacent dispensing tubes not for the teaching of sealing the end of the tubes, because this was already disclosed by Coplan.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Sameh H. Tawfik
Patent Examiner
Art Unit 3721



ST.
March 25, 2005

Conferees

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